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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 14, 2019
86th Legislature, Number 65
The House convenes at 10 a.m.
Part Two

The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

The House also will consider a Local, Consent, and Resolutions Calendar.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 65

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 14, 2019

86th Legislature, Number 65

Part 2

SUBJECT: Raising the legal age to 21 for cigarettes, e-cigarettes, and tobacco

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — S. Thompson, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Wray, Allison, Coleman

SENATE VOTE: On final passage, April 9 — 20-11 (Birdwell, Buckingham, Creighton, Fallon, Hall, Hancock, Hughes, Nichols, Paxton, Schwertner, Whitmire)

WITNESSES: *On House companion bill, HB 749:*
For —Stephen Ross, Texans Standing Tall; Doug Curran, Texas Medical Association; Suzi Kennon, Texas PTA; Brian Hayden; Kellen Kruk; (*Registered, but did not testify*: Eric Donaldson, Altria Group; Aaron Gregg, Alzheimer's Association; Marina Hench, American Cancer Society Cancer Action Network; Juliana Kerker, American College of Obstetricians and Gynecologists-Texas; Shelby Massey, American Heart Association; Gregg Knaupe, American Lung Association; Anthony Haley, Baylor Scott and White Health; April Beggs, Blue Cross Blue Shield of Texas; Claudia Rodas, Campaign for Tobacco-Free Kids; Kelly Barnes, Central Health; Christina Hoppe, Children's Hospital Association of Texas; Amber Hausenfluck, CHRISTUS Health; Christine Wright, City of San Antonio; Jesse Ozuna, DHR Health; Meghan Weller, HCA Healthcare; Betsy Madru, Houston Methodist; Mark Bordas, JUUL Labs; Lindsay Lanagan, Legacy Community Health; Christine Yanas, Methodist Healthcare Ministries of South Texas; Ryan Ambrose, MHHS; Will Francis, National Association of Social Workers-Texas Chapter; Jessica Schleifer, Teaching Hospitals of Texas; Tom Banning, Texas Academy of Family Physicians; Craig Holzheauser, Texas Association of City and County Health Officials; Jaime Capelo, Texas Chapter American College of Cardiology; Rosie Valadez-McStay, Texas Children's Hospital; Carrie Kroll, Texas Hospital Association; Andrew Cates, Texas Nurses Association; Jill Sutton, Texas Osteopathic Medical Association; Clayton

Travis, Texas Pediatric Society; Stephanie Chiarello, Texas Pharmacy Association; Maram Museitif, Texas Public Health Association; Rita Littlefield, Texas Renal Coalition; Kevin Stewart, Texas School Nurses Organization; Joel Romo, The Cooper Institute; Andrew Smith, University Health System)

Against — Steven Belcher; John Boniface; Brookes Boniface; Charlotte Owen; Jessica Quick; Kathleen Russell; (*Registered, but did not testify*: Robert Peeler, Cigar Association of America; Kevin Haynie, Craving Vapor Industries; Billy Phenix, SI Group; James Hubbard, T.S.V.L.; Ron Hinkle, Turning Point Brands, Inc; Brandy Marquez, Vapor Technology Association; Robbie Claus; Betty Hubbard; Joseph Longhurst; Jacqueline Stringer)

On — Schell Hammel, SFATA; Ernest Hawk, The University of Texas MD Anderson Cancer Center; (*Registered, but did not testify*: Coy Rosenbaum, Comptroller of Public Accounts; Manda Hall, Department of State Health Services)

DIGEST:

SB 21 would raise the minimum age requirement in applicable Texas law to 21 years old from 18 years old for buying, attempting to buy, possessing, consuming, or accepting cigarettes, e-cigarettes, or tobacco products. The bill would create an exception to prosecution that the person to whom the cigarette, e-cigarette, or tobacco product was sold was at least 18 years old, was on active duty in the United States military forces or state military forces, and presented a valid military identification card upon purchase.

The bill also would prohibit a person from selling, giving, or causing to be sold or given a cigarette, e-cigarette, or tobacco product to someone under 30 years old, rather than 27 years old, unless the purchaser presented an apparently valid proof of identification. The bill would make conforming changes related to shipping, delivery, and certain other laws related to an age requirement for cigarettes, e-cigarettes, or tobacco products. The offenses that currently apply to underage smoking also would apply to those younger than 21.

Exceptions. The bill would not apply to a person who was born on or

before August 31, 2001, or to a person who was on active duty in the U.S. military forces or state military forces. The bill would require statute-mandated signage related to cigarettes, e-cigarettes, or tobacco products to reflect the increased age requirement, and a temporary provision would require that signs specify the exception for those born on or before August 31, 2001.

Other prohibitions. The bill would prohibit the distribution, acceptance, or redemption of a free sample of a cigarette, e-cigarette, or tobacco product or a coupon or other item that the recipient could use to receive a free or sample cigarette, e-cigarette, or tobacco product. The bill would prohibit the distribution to, or acceptance or redemption of coupons for these products by people younger than 21.

The bill would not apply to a product that was approved by the U.S. Food and Drug Administration (FDA) for treatment of a nicotine or smoking addiction and was labeled with a "Drug Facts" panel in accordance with FDA regulations. The bill also would remove the requirement that shipped cigarettes and e-cigarettes carry a warning stating, "Texas law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."

If a facility or business was open to people younger than 21 years old, that facility or business could not offer cigarettes, e-cigarettes or tobacco products for sale in a manner that allowed a customer direct access and could not install or maintain a vending machine with these products.

Offense and expunction. SB 21 would make it an offense for a person younger than 21 years old to possess, purchase, consume, or accept a cigarette, e-cigarette, or tobacco product or to make a false representation of their age to obtain a tobacco product, punishable by a maximum fine of $100. On conviction of an individual, the court would have to give notice that the individual could apply to have the individual's conviction expunged on or after the individual's 21st birthday. It would be an exception to the offense that the individual younger than 21 years old:

- possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer, if possession or receipt of those products

was required in the performance of the employee's duties;

- was participating in an inspection or test of compliance with the law; and
- was at least 18 years old, was on active U.S. or state military duty, and presented a valid military identification card upon purchase.

The bill would remove a justice or municipal court's authority to order the suspension or denial of a driver's license or permit in connection with e-cigarette and tobacco use by minors.

Other provisions. The bill also would change the age to 21 from 18 for a class C misdemeanor (maximum fine of $500) related to sale of cigarettes, e-cigarettes or tobacco products.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

SB 21 would improve public health and help prevent tobacco-related deaths by limiting access to cigarettes, tobacco products, and e-cigarettes for adolescents and those under 21 years old. Tobacco use is the leading cause of preventable death in the United States. Thousands of Texans who began smoking before turning 21 could die prematurely if current trends continue.

The bill would limit the public health, Medicaid, and economic costs of tobacco use in Texas. The goal is not to regulate choices of citizens but to widen the age gap for availability of tobacco products. Almost all tobacco users begin before age 21, and adolescents are vulnerable to marketing for such products. Peers between the ages of 18 and 21 are likely to introduce younger children to their first tobacco product.

SB 21 would create exceptions from its prohibitions for active duty military members. The bill also would establish a process for certain convicted individuals to apply to have their conviction expunged.

E-cigarettes should not be excluded from the bill because they are tobacco delivery devices and contain nicotine, which is highly addictive. E-cigarettes have not been around long enough to have robust studies on the

link between their use and premature death, but the risks of nicotine and tobacco are known.

Lost tax revenue related to reduced tobacco sales would be offset by decreased health care costs in the state as well as reduced Texas Medicaid costs. Many Medicaid patients have expensive health care costs for tobacco-related illnesses.

OPPONENTS SAY:

Individuals who are 18 years old are adults and should be able to make their own decisions regarding use of cigarettes, e-cigarettes, and tobacco products.

E-cigarettes are not as dangerous as cigarettes and should not be included in this bill. In some cases, doctors may recommend that a patient use an e-cigarette as an alternative to a more potentially harmful tobacco product. The bill also could prohibit adults younger than 21 from working in vaping shops, and those who already work there could lose their jobs.

SB 21 could lead to criminal records for people whose only crime was using tobacco. The bill also would cost the state millions of dollars in the form of lost tax revenue from tobacco-related sales without making up that difference elsewhere.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of $5.1 million to general revenue related funds through fiscal 2020-21. The bill also would result in a revenue loss to the Property Tax Relief Fund of $3.4 million for fiscal 2020-21. Any loss to the Property Tax Relief Fund must be made up with an equal amount of general revenue to fund the Foundation School Program.

SUBJECT: Establishing an advisory council on electric grid security

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Phelan, Guerra, Harless, Holland, Hunter, P. King, Raymond, Springer

0 nays

5 absent — Hernandez, Deshotel, Parker, E. Rodriguez, Smithee

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: *On House companion bill, HB 3378:*
For — Julie Rathgeber, Association of Electric Companies of Texas; Tom Glass, Protect the Texas Grid; (*Registered, but did not testify:* Isaac Albarado, AEP Texas; Tami Miller, CenterPoint Energy; Bill Lauderback, Lower Colorado River Authority; Jessica Oney, NRG Energy; James Dickey, Republican Party of Texas; Katie Coleman, Texas Association of Manufacturers; Monty Wynn, Texas Municipal League; Russell T. "Russ" Keene, Texas Public Power Association; Brent Chaney, Vistra Energy)

On — (*Registered, but did not testify:* Cheryl Mele, Electric Reliability Council of Texas; Thomas Gleeson, Public Utility Commission)

Against — None

DIGEST: CSSB 475 would establish the Texas Electric Grid Security Council as an advisory body to facilitate the development and dissemination of best security practices for the electric industry, including the generation, transmission, and distribution of electricity.

The council would be composed of:

- the commissioner of the Public Utility Commission, who would also serve as the presiding officer of the council;
- the chief executive officer of Electric Reliability Council of Texas

(ERCOT) or a representative; and
- the governor or a representative designated by the governor.

Members of the council would not be entitled to compensation, but could be reimbursed for travel and other necessary expenses.

Members of the council could apply for a secret security clearance or an interim security clearance granted by the federal government. A member of the council would not be allowed to access to classified information or participate in council activities involving such information unless the member had a secret security clearance.

ERCOT would be required to:

- provide information and resources requested by the council;
- maintain nonclassified information obtained or created by the council and provide members access to it; and
- retain the nonclassified information for five years after the date the council obtained or created the information.

The council could consult and coordinate with:

- the Texas Division of Emergency Management;
- the U.S. Department of Energy;
- the U.S. Department of Homeland Security;
- the North American Electric Reliability Corporation;
- the Texas Reliability Entity;
- federal and state agencies;
- members of the electric industry; and
- grid security experts.

On request of the governor, the lieutenant governor, or the chairs of the House or Senate committees with jurisdiction over energy utility regulation, the council would have to issue to the requestor recommendations regarding:

- the development of educational programs or marketing materials to

promote the development of a grid security workforce;
- the development of grid security best practices;
- preparation for events that threatened grid security; and
- amendments to the state emergency management plan to ensure coordinated and adaptable response and recovery efforts after events that threatened grid security.

The council could prepare a report outlining grid security response efforts that did not involve classified or highly sensitive, company-specific information. If the council prepared the report, the council would be required to deliver the report to the governor, lieutenant governor, and the Legislature on or before the December 1 immediately preceding a regular legislative session.

The meetings of the council and any information obtained or created by it would not be subject to open meetings or public information laws.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSSB 475 would promote collaboration among electric utilities, generators, and regulators to ensure industry best security practices were shared. The electrical grid is increasingly interconnected, and while the increased connectivity leads to improved efficiency and grid performance, concerned parties note that it also increases the system's vulnerability to cyber threats and other threats. This bill would establish the first step in a process to help determine the best ways to harden the Texas grid against a variety of potential threats.

National reliability standards exist, and the electric industry has taken significant steps to secure the system, but rapidly evolving technology, the threat of a sophisticated attack, and the risks of a widespread outage make clear that effective policies also must be developed to address these potential safety and security risks.

Texas is the only state in the lower 48 with an electric grid fully within its borders, making it appropriate for Texas to coordinate among its electric

industry stakeholders. Although there are efforts underway to improve grid security, there is not enough coordination among the efforts. The bill would provide a way for electric utilities to collaborate, share information, and institute best security practices.

The bill should not be any more prescriptive or there could be a detrimental effect on the Texas Electric Grid Security Council's collaborative efforts. The bill's language is broad enough to allow the council to provide recommendations on any and all threats, including physical threats, cyber threats, an electromagnetic pulse, geomagnetic disturbances, and solar flares. The council's membership would include appropriate individuals who already hold the necessary security clearances. The bill simply would provide statutory permission to access confidential, company-specific information.

This bill would create an advisory body specifically for the electric industry to share, collaborate, communicate, and disseminate best security practices. The advisory body's duties would not relate to emergency management or public safety concerns, and another bill would be a better mechanism to address disaster preparedness.

OPPONENTS SAY:

CSSB 475 would not go far enough to address threats to the state's grid. The bill should be more prescriptive and require the Texas Electric Grid Security Council to provide recommendations on efforts needed to secure the grid against threats. By being permissive and vague, the bill could allow the electric industry to delay making necessary investments in grid hardening. The threats have been thoroughly studied, and the Legislature should require the industry to take action instead of gathering information.

The council would be too narrowly focused on physical and cyber threats to grid security when the greatest threats come from an electromagnetic pulse or solar flares. The bill should require the council to take action on these threats specifically.

The Texas Division of Emergency Management should have a more active role on the council and in its activities. The bill should include a representative of the division on the council and require the council to evaluate emergency planning, response, and recovery efforts related to

security threats.

Experts from the electric industry should be included on the council, rather than simply consulted, to ensure that they were included in any activities. The council also should include representatives from the military, at both the state and federal level, who are working on and knowledgeable about the issues.

SUBJECT: Requiring GLO to enter specific contracts to rebuild following a disaster

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Nevárez, Paul, Burns, Calanni, Clardy, Goodwin, Israel, Lang, Tinderholt

0 nays

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Clifford Sparks, City of Dallas; Ender Reed, Harris County Commissioners Court; Arthur Simon)

Against — None

On — (*Registered, but did not testify*: Christa Lopez, Texas General Land Office)

DIGEST: CSSB 300 would require the General Land Office (GLO) to enter into indefinite quantity contracts with vendors to provide information management services, construction services, including engineering services, and other services to construct, repair, or rebuild property or infrastructure in the event of a natural disaster.

A contract entered into could not expire after May 1 of a calendar year. The terms of the contract would have to provide that it was contingent on the availability of funds, the occurrence of a natural disaster within 48 months after the effective date of the contract, and delivery of services to an area declared by the governor or U.S. president to be a disaster area as a result of a natural disaster. A contract would have a term of four years.

A contract could be funded by multiple sources, including local, state, and federal agencies and the disaster contingency fund established in law. If GLO determined that federal funds could be used for a contract, it would have to ensure that the contract complied with federal acquisition

regulations.

In awarding a contract, GLO would have to consider and apply any applicable state law and rules relating to contracting with historically underutilized businesses. GLO would have to follow procedures under state law for contracting for certain professional services.

GLO would have to ensure that it had contracts in place with vendors to provide the services that took effect immediately on the expiration of a previous contract under the bill. If on September 1, 2019, GLO had indefinite quantity contracts with vendors for the provision of services, GLO would not be required to enter into new contracts that met the bill's requirements until those existing contracts expired.

GLO would have to enter into indefinite quantity contracts by May 1, 2020.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSSB 300 would improve response and recovery efforts in future disasters by helping the state respond faster and more efficiently. Based on lessons learned from its housing assistance mission, in the report *Hurricane Harvey: Texas at Risk*, the General Land Office (GLO) recommended bidding out indefinite quantity contracts before each hurricane season for necessary services so contracts would be in place and could be activated within a week of a natural disaster. GLO faced problems with federal contracting regulations and insufficient contracts while responding to Harvey, which slowed response time and led to deficiencies in recovery measures.

Indefinite quantity contracts are contracts in waiting that help streamline the contract process and expedite service delivery. The contracts would be negotiated and agreed to prior to a disaster and cast a broad net to ensure that all possible needs could be met after an actual event. Final pricing and contracting details would be decided once an event occurred, allowing GLO to assess whether a vendor continued to be qualified and determine the quantity and level of services needed.

The bill would ensure that contractors remained to help with recovery efforts and would save taxpayer money. Many contractors left Texas after Harvey to provide recovery assistance in other states paying more for contracted services. As a result, the prices for services from remaining vendors increased. Requiring GLO to enter into contracts prior to a hurricane season and negotiate prices at a time when there was no emergency would make certain that vendors remained to provide services and could not increase prices.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Requiring disclosures on insurance policies that do not cover flooding

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Lucio, G. Bonnen, Julie Johnson, Lambert, Paul, C. Turner, Vo

0 nays

2 absent — Oliverson, S. Davis

SENATE VOTE: On final passage, April 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 283:*
For — Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Jennifer Allmon, The Texas Catholic Conference of Bishops; Sandy Hoy, Texas Apartment Association; Lee Loftis, Independent Insurance Agents of Texas; Marti Luparello, Texas Farm Bureau Insurance Companies; Ware Wendell, Texas Watch; Joe Woods, American Property Casualty Insurance Association

Against — None

On — (*Registered, but did not testify:* Kimberly Donovan and Melissa Hamilton, Office of Public Insurance Counsel; David Muckerheide, Texas Department of Insurance)

DIGEST: SB 442 would require an insurer that issued or renewed a commercial or residential property insurance policy that did not provide coverage against loss caused by flooding to include certain information with the policy documents provided to the policyholder. The documents provided to a policyholder at the time the policy was issued or renewed would have to include, in a conspicuous manner, the following statement:

"Flood Insurance: You may also need to consider the purchase of flood insurance. Your insurance policy does not include coverage for damage resulting from a flood even if hurricane winds and rain caused the flood to

occur. Without separate flood insurance coverage, you may have uncovered losses caused by a flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent or insurance company, or visit www.floodsmart.gov."

An insurer's failure to comply with the bill would not invalidate any exclusion, including a flood exclusion, in a commercial or residential property insurance policy.

The bill's provisions would apply to each authorized insurer in the state, including a county mutual insurance company, farm mutual insurance company, Lloyd's plan, and reciprocal or interinsurance exchange.

The bill would take effect September 1, 2019 and would apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2020.

SUPPORTERS SAY:

SB 442 would be a simple and low-cost solution to inform consumers that they were without flood insurance so they could better prepare for future natural disasters. Many Texans who live in flood-prone areas continue to lack flood insurance because they mistakenly believe that their property insurance policy includes flood coverage.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Revising processes by which public information is requested, released

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer

0 nays

2 absent — Hernandez, E. Rodriguez

SENATE VOTE: On final passage, April 10 — 29-1 (Creighton)

WITNESSES: *On House companion bill, HB 2191:*
For — Rob Johnson, Clients of the firm Foley Gardere; James Hemphill, Freedom of Information Foundation of Texas; (*Registered, but did not testify:* Matt Simpson, American Civil Liberties Union of Texas; John Bridges, Austin American-Statesman, Freedom of Information Foundation of Texas, Texas Press Association; Adam Cahn, Cahnman's Musings; Dick Lavine, Center for Public Policy Priorities; Dave Jones, Clean Elections Texas; Anthony Gutierrez, Common Cause Texas; Kelley Shannon, Freedom of Information Foundation of Texas; Tom Oney, Lower Colorado River Authority; Michael Coleman, Public Citizen; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Bill Patterson, Texas Press Association; Bay Scoggin, Texas Public Interest Research Group; Stephanie Ingersoll)

Against — None

On — Zenobia Joseph; (*Registered, but did not testify:* Justin Gordon, Office of the Attorney General; Troy Alexander, Texas Medical Association)

BACKGROUND: Government Code ch. 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request unless that information is excepted from disclosure. Subch. G establishes the process by which a governmental body must request an

attorney general decision if it wishes to withhold information from public disclosure under a statutory exception.

Sec. 552.205 requires an officer for public information to prominently display a plainly visible sign in a governmental body's administrative offices that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information.

Observers have noted that some of the procedures related to requesting public information are inefficient, including processes for governmental bodies to receive and respond to requests that include confidential or otherwise excepted information. Others also have raised concerns about access to public information stored on privately owned devices.

DIGEST:

SB 944 would revise the Public Information Act to provide a process for a governmental body to retrieve public information held by a temporary custodian, specify the procedure for making a written request, require the attorney general to create a request form, and create an exception for certain health information.

Temporary custodian. The bill would require a current or former officer or employee of a governmental body who maintained public information on a privately owned device to:

- forward or transfer the information to the governmental body or a governmental body server to be preserved; or
- preserve the public information in its original form in a backup or archive on the privately owned device for a period of time determined by the governmental body.

Current law governing the preservation, destruction, or other disposition of records or public information would apply to records and public information held by a temporary custodian.

The bill would define "temporary custodian" as an officer or employee of a governmental body who, in the transaction of official business, created or received public information that the officer or employee had not

provided to the governmental body's officer for public information. The term would include a former employee or officer.

Ownership of public information. A current or former officer or employee of a governmental body would not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

A temporary custodian with possession, custody, or control of public information would have to surrender or return the information within 10 days after the governmental body's officer for public information requested it.

A temporary custodian's failure to surrender or return the information as required would be grounds for disciplinary action by the governmental body that employed the temporary custodian or any other applicable penalties provided by the Public Information Act or other law.

An officer for public information would be required to make reasonable efforts to obtain public information from a temporary custodian if:

- the information had been requested from the governmental body;
- the officer was aware of facts sufficient to warrant a reasonable belief that the temporary custodian had possession, custody, or control of the information;
- the officer was unable to comply with the duties imposed by the Public Information Act without obtaining the information; and
- the temporary custodian had not provided the information to the officer.

For the purposes of Government Code ch. 552, subch. G relating to information surrendered or returned by a temporary custodian, the governmental body would be considered to have received the request for that information on the date the information was surrendered or returned.

Written requests. A person could make a written request for public information only by delivering the request to the officer for public

information by U.S. mail, email, hand delivery, or any other method approved by the governmental body, including by fax and through the governmental body's website. A statement on a governmental body's approved methods would have to be included on the sign required under Government Code sec. 552.205 or the governmental body's website.

A governmental body could designate one mailing address and one email address for receiving written requests for public information and would have to provide the addresses to any person on request. A governmental body that posted the mailing and email addresses on its website or on the displayed sign would not be required to respond to a written request for public information unless it was received at one of those addresses, by hand delivery, or by another approved method.

Public information request form. The bill would require the attorney general to create a request form that provided a requestor the option of excluding from a request information that the governmental body determined was confidential or subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

The attorney general would have to create the form by October 1, 2019. A governmental body that maintained a website and allowed requestors to use the form would have to post the form on its website.

Health information. The bill would specify that protected health information, including any information that reflected that an individual received health care from a covered entity that was a governmental unit, was not public information and not subject to disclosure.

Information obtained by a governmental body that was provided by an out-of-state health care provider in connection with a quality management, peer review, or best practices program that the out-of-state provider paid for would be confidential and excepted from disclosure under public information laws.

The bill would take effect September 1, 2019, and would apply only to a public information request received on or after that date.

SUBJECT: Exempting certain TexAmericas Center property from taxation

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, E. Rodriguez, Shaheen

0 nays

2 absent — Sanford, Wray

SENATE VOTE: On final passage, April 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2958:*
For — Scott Norton, TexAmericas Center

Against — None

BACKGROUND: Special District Local Laws Code ch. 3503 establishes the TexAmericas Center for the purpose of promoting the location and development of new businesses, industries, and commercial activities at the location of the former Red River Army Depot military base.

Sec. 3503.154 exempts the property, revenue, and income of the authority and each nonprofit corporation created under the chapter from all taxes imposed by the state or a political subdivision of the state.

DIGEST: SB 579 would exempt a leasehold or other possessory interest granted to a person by the TexAmericas Center or by a nonprofit corporation holding title for the TexAmericas Center from property taxation, and such property would be owned, used, and held for a public purpose for and on behalf of the TexAmericas Center.

The bill would exempt such property from provisions of the Tax Code relating to the listing of such property in the name of the owner of the possessory interest under certain circumstances.

The bill would take effect January 1, 2020, and would apply only to a property tax year beginning on or after that date.

SUPPORTERS SAY:

SB 579 would level the playing field between the TexAmericas Center and other military redevelopment authorities that have greater financial incentives at their disposal to attract businesses and create jobs. Currently, other entities in statute that were created for substantially the same purpose as the TexAmericas Center, namely the Defense Base Redevelopment Authority and Type B Development corporations, are able to classify property that they lease as exempt from certain property taxes. This bill would extend to the TexAmericas Center the same tax benefits already enjoyed by those other entities, helping it attract new businesses and commercial activity to the area.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Reallocating annual HEF funding for certain higher education institutions

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 20 ayes — Zerwas, C. Bell, Buckley, Capriglione, Cortez, S. Davis, Howard, Miller, Minjarez, Muñoz, Rose, Schaefer, Sheffield, Sherman, Smith, Stucky, Toth, J. Turner, VanDeaver, Wilson

0 nays

7 absent — Longoria, G. Bonnen, M. González, Hefner, Jarvis Johnson, Walle, Wu

SENATE VOTE: On final passage, April 10 — 29-1 (Hall)

WITNESSES: *On House companion bill, HB 1562:*
For — None

Against — None

On — (*Registered, but did not testify:* Daniel Harper, The Texas State University System; Thomas Keaton, Texas Higher Education Coordinating Board)

BACKGROUND: Texas Constitution Art. 7, sec. 17(a) requires the Legislature to authorize allocations of the Higher Education Fund (HEF) to provide funding for acquiring land, constructing and equipping buildings and other permanent improvements, major repairs and renovations of buildings or other permanent improvements, and acquiring capital equipment, library books, and library materials at public higher education institutions that are not eligible for Available University Fund (AUF) funding. Under sec. 17(f), funds may not be used to construct, equip, or repair buildings or other improvements that are used only for student housing, intercollegiate athletics, or auxiliary enterprises.

The Constitution states that in the fiscal year beginning September 1, 1985, and each fiscal year thereafter, there was appropriated $100 million

for these purposes. The Constitution authorizes the Legislature to increase that appropriation, and the last time it was increased was in 2015. SB 1191 by Seliger, enacted by the 84th Legislature, amended Education Code sec. 62.024 to increase that amount from $262.5 million to $393.75 million beginning in fiscal 2017.

Under Art. 7, sec. 17(d), every 10 years the Legislature is required to allocate by formula the annual appropriations. Every five years of each 10-year period the Legislature is required to review the allocation formula and may make adjustments. The total amount of distributions appear in the general appropriations act and flow through an equitable formula to institutions over the 10-year period.

Education Code sec. 62.022 requires the Higher Education Coordinating Board, in the middle of each 10-year period, to conduct a five-year review of the allocation formula prior to the convening of a regular legislative session. The coordinating board must conduct the review with the full participation of the eligible institutions and present recommendations to the Legislative Budget Board and the appropriate legislative committees on any proposed adjustments to the allocation formula. The Legislature is required to approve, modify and approve, or reject the recommendations of the coordinating board.

Education Code sec. 62.021 contains the current allocations of these amounts and states that the funds are allocated based on an equitable formula with three elements: space deficit, facilities condition, and institutional complexity. The formula also includes a separate allocation to the Texas State Technical College System, which, under the Constitution, is capped at no more than 2.2 percent of the total HEF allocation. The balance of the HEF funds is then distributed by the formula.

DIGEST:

CSSB 709 would establish the allocations of Higher Education Fund (HEF) funding to certain state higher education institutions. Total allocations each fiscal year for fiscal 2020 and beyond would remain the same. Individual allocations for fiscal 2020 would remain the same as the allocations that were established for fiscal 2017. Individual allocations for fiscal 2021 and beyond would be reallocated as listed in the bill.

For both fiscal 2020 and fiscal 2021 and beyond, the bill would make adjustments to two institutions. The bill would eliminate a specific provision for the University of North Texas at Dallas College of Law under the allocation to the University of North Texas at Dallas. The bill would add two component campuses to the Texas State Technical College (TSTC) system: TSTC-Fort Bend and TSTC-North Texas.

CSSB 709 would authorize institutions to use the funds for cloud computing services or other intangible assets with an expected useful life or for a contract period of more than one year.

The bill would eliminate a requirement for Legislative approval or the approval, review, or endorsement by the Texas Higher Education Coordinating Board for certain projects, leaving the current authority for governing boards to expend the funds.

The bill would take effect August 31, 2019.

SUPPORTERS SAY:

CSSB 709 is the constitutionally required reallocation of Higher Education Fund (HEF) money to certain institutions of higher education. The allocations in CSSB 709 would go to institutions not eligible for funding through the Permanent University Fund (PUF) to help them keep up with their needs.

The total amount of funds allocated for fiscal 2020 and beyond would remain at $393.75 million, where it has been since 2017. The bill would not make any adjustments that would prevent the payment of bonds. The bill would reallocate these funds to address capital projects at about 30 of the state's public institutions based on data compiled by the Texas Higher Education Coordinating Board (THECB). The bill is the result of a study by THECB that included involvement of all HEF-eligible institutions, including a survey of their deferred maintenance needs. THECB also invited all HEF-eligible institutions to be part of a stakeholder group, and about two-thirds participated.

The bill would include authorization for funds to be spent for cloud computing services so that institutions could keep up with technology needs.

CSSB 709 clarifies the allowable use of HEF funds to include cloud computing and other intangible assets with an expected life or contract period of more than one year. This clarification maintains the original intent of the Legislature and allows institutions to transition software purchases from the antiquated license-based products to current cloud-based products.

The bill would remove an approval process for certain projects to reflect changes made to that process in 2011 by the 82nd Legislature.

Other changes that would be made by the bill are technical or cleanup language. The specific allocation to the University of North Texas at Dallas College of Law under the allocation to the University of North Texas at Dallas would be eliminated because the law school is now fully integrated into the larger system. The law school would continue to receive any funding through the larger system. Two campuses would be added to the allocation for Texas State Technical College to reflect previously approved new locations. Outdated provisions relating to Texas Tech that were instituted before that university's system was fully established would be eliminated from statute.

OPPONENTS SAY:

CSSB 709 could expand the uses of the HEF allocations beyond what is authorized by the Constitution. The bill would allow the funding to be used for intangible assets with an expected useful life or a contract period of more than one year, a departure from the currently authorized uses that focus on tangible assets. Allowing uses for any contract of more than one year could open up the funding for almost any use.

NOTES:

According to the Legislative Budget Board, the bill would have no fiscal implication to the state, and the total appropriations for fiscal 2020-21 would be equal to the fiscal 2018-19 amounts.

SUBJECT: Reforming procedures for court-ordered mental health services

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Leach, Y. Davis, Krause, Meyer, Neave, Smith, White

0 nays

2 absent — Farrar, Julie Johnson

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Maggie Stern, Children's Defense Fund; Chris Masey, Coalition of Texans with Disabilities; M. Paige Williams, Dallas County Criminal District Attorney John Creuzot; Aaryce Hayes, Disability Rights Texas; Marilyn Hartman, National Alliance on Mental Illness Austin; Greg Hansch and Alissa Sughrue, National Alliance on Mental Illness Texas; Michael Barba, Texas Catholic Conference of Bishops; Lee Johnson, Texas Council of Community Centers; Kevin Stewart, Texas Psychological Association; Guy Herman, Travis County Probate Court)

Against — (*Registered, but did not testify*: Deborah Nelms)

On — David Slayton, Texas Judicial Council; (*Registered, but did not testify*: Trina Ita and Rachel Samsel, Health and Human Services Commission)

BACKGROUND: Health and Safety Code ch. 574 establishes procedures for court-ordered inpatient and outpatient mental health services.

Secs. 574.034 and 574.035 require courts to make certain findings before ordering proposed patients to receive outpatient mental health services, including that:

- the proposed patient is a person with mental illness;

- the nature of the mental illness is severe and persistent;
- the proposed patient will continue to suffer severe and abnormal mental, emotional, or physical distress without treatment and experience deterioration of the ability to function independently to the extent of being unable to live safely in the community without court-ordered outpatient mental health services; and
- the proposed patient has an inability to participate effectively and voluntarily in outpatient treatment services.

Sec. 574.081 requires the physician responsible for the patient's treatment to develop continuing care plans for a patient scheduled to be furloughed or discharged. These plans must address a patient's mental health and physical needs, including the need for sufficient medication on furlough or discharge to last until the patient can see a physician and the persons or entities responsible for providing and paying for such medication.

DIGEST:

CSSB 362 would modify certain procedures and requirements related to court-ordered inpatient and outpatient mental health services, including the standards that would have to be met in order for courts to order such services, the mechanisms for transitioning patients from inpatient to outpatient or continuing care, and the procedures for diverting certain individuals with mental illnesses from the criminal justice system to outpatient services.

Outpatient mental health services. The bill would remove a requirement that courts find that a proposed patient would continue to suffer severe and abnormal mental, emotional, or physical distress without treatment before ordering the patient to receive outpatient mental health services. The bill would establish a requirement that courts find that a proposed patient needed outpatient mental health services in order to prevent a relapse that would likely result in serious harm to the proposed patient or others.

Under the bill, a proposed patient's inability to participate effectively and voluntarily in outpatient treatment services could be demonstrated by specific characteristics of the patient's clinical condition that significantly impaired, rather than rendered impossible, the patient's ability to make a rational and informed decision about whether to submit to voluntary

outpatient treatment.

CSSB 362 also would expand the list of persons who could be designated as responsible for a patient's outpatient services without their consent to include a facility administrator of a department facility or a community center that provided mental health services in a county where the patient previously had received mental health services.

Modification of commitment orders. The bill would require the facility administrator of a facility to which a patient was committed for inpatient mental health services to assess the appropriateness of transferring the patient to outpatient mental health services by the 30th day after the patient was committed.

In a hearing on a facility administrator's recommendation that the court modify a commitment order, the court would have to consult with the local mental health authority before issuing a decision. A court would be allowed to extend the term of the original commitment order by no more than 60 days.

Continuing care. Subject to available resources, continuing care plans would have to be developed for patients scheduled to be furloughed or discharged from a state hospital or from any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission (HHSC) or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

A continuing care plan would have to address the patient's need for outpatient mental health services following furlough or discharge, if appropriate, but would no longer be required to address the person or entity responsible for providing and paying for a patient's medication. Local mental health authorities would have to be informed of and participate in planning the discharge of patients.

The bill also would require private mental health facilities to provide or pay for enough psychoactive medication and certain other medication prescribed to a patient to last until the patient could see a physician after furlough or discharge. This requirement would be subject to available

funding provided to HHSC and paid to private mental health facilities for such purpose.

HHSC would be required to adopt rules to determine the quantity and manner of providing psychoactive medication to patients on furlough or discharge. The commission could not require mental health facilities to provide or pay for such medication for more than seven days after furlough or discharge.

Diversion from the criminal justice system. The bill would specify that trial courts that received an expert assessment that a defendant who was not charged with offenses involving serious bodily injury to another person had a mental illness could release the defendant on bail while the charges remained pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services.

If a court entered such an order, an attorney representing the state would have to file an application for court-ordered outpatient services for the defendant.

On the motion of such an attorney, and if the court determined that the defendant complied with appropriate court-ordered outpatient treatment, the court could dismiss the charges pending against the defendant. Otherwise, the court could proceed with further commitment proceedings or with the trial of the offense.

Implementation. CSSB 362 would require the Texas Supreme Court to adopt rules to streamline and promote the efficiency of court processes regarding emergency detention and to adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.

The court of criminal appeals would be required to ensure that judicial training related to court-ordered outpatient mental health services was provided at least once every year. Instruction could be provided at the annual Judicial Education Conference.

HHSC would be required to implement a provision of this bill only if the

Legislature appropriated money specifically for that purpose. If no such money was appropriated, HHSC could choose to implement that provision using other appropriations available for that purpose.

The bill would take effect September 1, 2019, and would apply to commitment proceedings or proceedings for court-ordered mental health services occurring on or after that date.

SUPPORTERS SAY:

CSSB 362 would update the provision of court-ordered mental health services in the state to conform with best practices and would clarify outdated standards.

The transition of individuals with mental health conditions from inpatient to less-restrictive outpatient care would be streamlined, potentially saving the state money by freeing up hospital beds used for inpatient mental health services. The bill also would address a serious gap in care by requiring that individuals being discharged from court-ordered services received enough medication to last them until they could see a physician.

CSSB 362 would clarify the mechanisms for diverting certain defendants with mental illnesses from the criminal justice system to the mental health system and would ensure proper judicial training relating to court-ordered mental health services.

OPPONENTS SAY:

CSSB 362 could erode patients' rights by reducing the standard for a court to order a person to receive outpatient mental health services. The bill would allow courts to order a person to receive such services if the person's clinical condition significantly impaired the person's ability to decide whether to enter into voluntary treatment. This would be a lower standard than requiring that the person's clinical condition rendered such a decision impossible, which is the standard under current law.

SUBJECT: Authorizing emergency mosquito control by a municipality

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 9 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza, Raymond, Zwiener

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Tammy Embrey, City of Corpus Christi; Guadalupe Cuellar, City of El Paso; Jamaal Smith, City of Houston Mayor's Office; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Michelle Romero, Texas Medical Association; Arthur Simon)

Against — None

On — (*Registered, but did not testify*: Dan Hunter, Texas Department of Agriculture)

BACKGROUND: Agriculture Code sec. 76.105 prohibits a person from buying or using restricted use pesticides or state-limited pesticides unless the person is licensed as a commercial applicator or is under the direct supervision of a licensed applicator.

4 TAC ch. 7, subch. D, sec. 7.31 states that a licensed pesticide applicator supervising unlicensed persons must ensure that those persons have either obtained five continuing education units for licensed commercial and noncommercial applicators or have been trained in pesticide law, regulation, label information, and safe use.

DIGEST: SB 1113 would allow a municipal or county health department to request a waiver from the Texas Department of Agriculture (TDA) authorizing the application of pesticides for mosquito control by unlicensed employees under the direct supervision of a licensed applicator if the municipality or county was in a state of disaster declared by the governor or the municipality or county health department had determined that immediate

action was needed to control the threat of mosquito-borne disease. TDA could grant the waiver upon request.

Licensed pesticide applicators and unlicensed persons applying pesticides under this waiver would be required to execute an affidavit issued by TDA describing the supervision arrangement and return the affidavit to TDA.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

SB 1113 would aid local governments in disaster recovery by allowing them to request waivers to let unlicensed employees rapidly assist with mosquito control in flooded areas by applying pesticides to standing water. Enabling local governments to access these waivers is an important tool for preventing public health threats from vector-borne diseases, particularly the Zika virus.

Mosquito-borne diseases become prevalent in flooded areas, exacerbating the threat to public health in areas already struck by disaster. This bill would codify the protocol and procedure that would have to be adhered to in order for a local health department to be eligible for a waiver for emergency mosquito control.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Posting the contact information of a school's discipline administrator

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Huberty, Bernal, Allen, Allison, K. Bell, Dutton, M. González, Meyer, Sanford, Talarico, VanDeaver

2 nays — Ashby, K. King

SENATE VOTE: On final passage, April 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3322:*
For — Paige Williams, Texas Classroom Teachers Association

Against — (*Registered, but did not testify*: Jerod Patterson, Texas Rural Education Association)

On — (*Registered, but did not testify*: Pablo Barrera, TCSA; Dee Carney, Texas School Alliance; Hannah LaPorte, IDEA Public Schools; Eric Marin and Melody Parrish, Texas Education Agency; Heather Smith)

DIGEST: SB 1306 would require school districts to post on the website for each district campus the email address and dedicated telephone number of the school's designated campus behavior coordinator. Districts designated as districts of innovation and exempt from the requirement to designate a campus behavior coordinator would be required to list contact information for a campus administrator designated as being responsible for student discipline.

The bill would apply beginning with the 2019-2020 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY: SB 1306 would help foster communication between parents and schools by listing campus behavior coordinators' contact information on school

websites. This would allow parents to report concerns about classroom misconduct and could enable parents to respond to and address any disciplinary issues involving their child. Campus behavior coordinators serve as the primary point of contact for parents subjected to disciplinary actions, so it is essential that parents know how to contact these individuals.

Because school districts already are required to designate behavior coordinators, the bill would not create an additional responsibility for districts.

OPPONENTS SAY:

SB 1306 would burden school districts with an additional responsibility that, together with other mandates, could strain school district resources.

SUBJECT: Lowering the threshold for state agency payment recovery audits

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Phelan, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer

0 nays

3 absent — Hernandez, Deshotel, E. Rodriguez

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2082:*
For — None

Against — None

On — (*Registered, but did not testify*: Rob Coleman, Comptroller of Public Accounts)

BACKGROUND: Government Code sec. 2115.002 requires the comptroller to contract with one or more consultants to conduct recovery audits of payments made by state agencies to vendors.

DIGEST: SB 1571 would remove the requirement for the comptroller to contract with one or more consultants to conduct recovery audits of payments made by state agencies to vendors and replace that requirement with an authorization to contract with consultants for that purpose.

The bill would remove a requirement that payment recovery audits be performed on payments to vendors made by each state agency that has total expenditures during a biennium that exceed $100 million and replace that requirement with an authorization for payment recovery audits on payments to vendors made by each state agency that had total expenditures during a biennium that exceeded $50 million.

The comptroller would be authorized to determine the frequency of payment recovery audits.

The bill would change a requirement that the comptroller provide copies of any reports received from a consultant contracting for payment recovery audits to the governor, the state auditor's office, and the Legislative Budget Board from the seventh to the 15th day after the date the comptroller received the consultant's report.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

SB 1571 would make it easier for the comptroller to contract with consulting firms to conduct recovery audits of payments made by state agencies to vendors. The comptroller's office reports that the small number of agencies that fall under the current requirement make it difficult to find consulting firms to conduct the audits. Since 2014, no contracts have been awarded due to disinterest from outside consulting firms. By allowing payment recovery audits of agencies with biennial expenditure levels of $50 million or more, additional agencies would be subject to the audits, which could expand the pool of consulting firms that may be interested in conducting the audits.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Requiring dual credit agreements to address academic advising

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 11 ayes — C. Turner, Stucky, Button, Frullo, Howard, E. Johnson, Pacheco, Schaefer, Smithee, Walle, Wilson

0 nays

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: *On House companion bill, HB 2197:*
For — Jacob Faire, Texas Association of Community Colleges; *(Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Dana Chiodo, CompTIA; Priscilla Camacho, Dallas Regional Chamber; Daniel Womack, Dow; Leticia Van de Putte, Pharr-San Juan Alamo ISD; Seth Rau, San Antonio ISD; Mike Meroney, Texas Association of Manufacturers; Justin Yancy, Texas Business Leadership Council; Nataly Sauceda, United Ways of Texas)

Against — None

On — Melissa Henderson, Educate Texas; *(Registered, but did not testify*: Rex Peebles, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code sec. 28.009 requires each school district to implement a program under which students may earn the equivalent of at least 12 semester credit hours of college credit in high school. On request, a public institution of higher education is required to assist the school district in developing and implementing the program. These credit hours may be earned through dual credit courses.

Sec. 28.025(c-1) establishes that a student can earn an endorsement on the student's transcript by successfully completing curriculum requirements for that endorsement adopted by the State Board of Education.

DIGEST: SB 1276 would require any agreement, including a memorandum of

understanding or articulation agreement, developed between a school district and a public institution of higher education to provide a dual credit program to:

- establish common advising strategies and terminology related to dual credit and college readiness;
- provide for the alignment of endorsements offered by the district and dual credit courses offered under the agreement that applied toward those endorsements with postsecondary pathways and credentials at the institution and industry certifications; and
- identify tools, including those developed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission, to assist school counselors, students, and families in selecting endorsements offered by the district and dual credit courses offered under the agreement.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019, and would apply only to an agreement entered into or renewed on or after that date.

SUPPORTERS SAY:

SB 1276 would improve dual credit agreements between school districts and partnering colleges by adding requirements to address coursework advising, which would help foster student success and reduce inefficiencies. Inadequate advising and course alignment in high schools can impair the ability of students to select the dual credit courses that would most benefit them. The bill would improve advising by identifying the best methods for selecting classes that were relevant to students' futures and implementing those advising methods in each school district.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Modifying certificate of merit requirements in certain lawsuits

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

SENATE VOTE: On final passage, April 26 — 30-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2440:*
For — Peyton McKnight, American Council of Engineering Companies of Texas; (*Registered, but did not testify:* Michael Garcia, Texas Association of Manufacturers; Lee Parsley, Texans for Lawsuit Reform; David Lancaster, Texas Society of Architects; Jennifer McEwan, Texas Society of Professional Engineers)

Against — None

BACKGROUND: Civil Practice and Remedies Code sec. 150.002 requires that in any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed architect, licensed professional engineer, registered professional land surveyor, registered landscape architect, or any firm in which such licensed or registered professionals practice, the plaintiff must file an affidavit, called a certificate of merit, from a third-party licensed professional who:

- is competent to testify;
- holds the same professional license or registration as the defendant; and
- is knowledgeable in the area of practice of the defendant and offers testimony based on the person's knowledge, skill, experience, education, training, and practice.

DIGEST: SB 1928 would specify that the affidavit required under Civil Practice and Remedies Code sec. 150.002 would have to be from a third party

professional who practiced in the same area of practice as the defendant. This would replace the requirement that the third party professional was knowledgeable in the area of practice.

The bill also would replace the term "plaintiff" with the term "claimant" in that section. "Claimant" would be defined as a party, including a plaintiff or third-party plaintiff, that sought recovery for damages, contribution, or indemnification in the suit.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019, and would apply only to actions or arbitration proceedings commenced on or after that date.

SUPPORTERS SAY:

SB 1928 would help prevent frivolous claims against certain licensed and registered professionals by amending statute that governs required certificates of merit. Under current law, plaintiffs must file these certificates of merit in certain lawsuits. However, Texas courts have ruled that this requirement applies only to the original plaintiffs in the suit, not to all claimants. Requiring cross-plaintiffs and defendants acting as counter-plaintiffs to file such certificates would help prevent frivolous claims and ensure that all claims were vetted by third-party professionals. The bill would accomplish this by requiring all claimants to file certificates of merit.

The bill also would ensure the factuality of claims made in these certificates and related proceedings by requiring that third-party professionals who swore to certificates of merit were experts who practiced in the same area as defendants, rather than simply individuals who claimed to have knowledge of the practice area.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Amending the authority and operations of TPCIGA

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Lucio, Oliverson, G. Bonnen, S. Davis, Julie Johnson, Lambert, Paul, C. Turner

0 nays

1 absent — Vo

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 1982:*
For — (*Registered, but did not testify:* Jay Thompson, Afact; Joe Woods, American Property Casualty Insurance Association; Paul Martin, National Association of Mutual Insurance Companies; Ashley Morgan, Nationwide; Susan Ross, State Farm Insurance; Jessica Boston, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Burnie Burner, Texas Title Insurance Guaranty Association; Cathy DeWitt, USAA)

Against — None

On — Shelby Baetz, Texas Property and Casualty Insurance Guaranty Association; (*Registered, but did not testify:* Jamie Walker, Texas Department of Insurance)

BACKGROUND: Insurance Code ch. 462 establishes the Texas Property and Casualty Insurance Guaranty Association (TPCIGA) as a nonprofit unincorporated legal entity composed of all member insurers. Member insurers have to remain members of TPCIGA as a condition of engaging in the business of insurance in Texas.

The association's powers are exercised through a nine-member board of directors. Member insurers select five industry board members, and the insurance commissioner appoints four board members to serve as public

representatives.

DIGEST:

SB 1063 would amend statutes governing the authority and operations of the Texas Property and Casualty Insurance Guaranty Association (TPCIGA), and would authorize the association to recover costs and attorney's fees incurred in certain enforcement proceedings.

Definitions. The bill would change the statutory definition of an "impaired insurer" to a member insurer that was subject to a final, nonappealable order of liquidation that included a finding of insolvency issued by a court of competent jurisdiction in Texas or the insurer's state of domicile.

Operations. SB 1063 would amend the process for filling certain vacancies on the TPCIGA board of directors. Under the bill, a vacancy for the unexpired term of a director who served as an insurance industry board member would be filled by a majority vote of the remaining board members, subject to the commissioner's approval. The commissioner would fill a vacancy for the unexpired term of a director who served as a public representative on the board by appointment.

The bill would remove a stipulation that TPCIGA could hold an open meeting by conference call only under certain circumstances and would establish new requirements for open meetings held by conference call. Under the bill, a meeting held by telephone conference call would have to be audible to the public at a specified location and would have to allow two-way audio communication between board members during the entire meeting. If the two-way audio communication was disrupted during a meeting so that a quorum of the board was no longer able to participate, the meeting could not continue until the two-way audio was reestablished. An audio recording of the open portion of the meeting would have to be made publicly available on TPCIGA's website.

SB 1063 also would authorize TPCIGA to handle claims through contract claims adjusters and to use an insurer designated as a servicing facility under a servicing agreement or loss portfolio transfer agreement, subject to the approval of the insurance commissioner.

Cost recovery. TPCIGA would be entitled to recover costs and attorney's fees incurred in defending the association or an impaired insurer's insured against a claim brought in violation of statute by a reinsurer, insurer, self-insurer, insurance pool, or underwriting association, on that entity's own behalf or on behalf of the entity's insured, after the date that the entity was provided applicable notice.

TPCIGA also would be entitled to recover costs and attorney's fees incurred in contesting claims based on certain judgments, settlements, or releases on the association's behalf or on behalf of an impaired insurer's insured after the date on which the party asserting the claim was provided notice by the association.

TPCIGA's right to recover the proceeds from the sale of salvage property related to a covered claim could not be reduced in the amount of any pre-impairment costs, fees, or expenses related to the salvage property that were not part of the covered claim under statute. A person or entity in possession of salvage property subject to TPCIGA's right of recovery could not seek recovery from the association for any pre-impairment costs, fees, or expenses.

For a claim arising from certain insured entities that had filed for bankruptcy, insolvency, or liquidation, a court would have to award TPCIGA the costs and attorney's fees incurred in seeking recovery or attempting to obtain the insured's financial information.

SB 1063 also would authorize the association to recover the amount of a covered claim for workers' compensation insurance benefits and the costs of administration and defense of the claim from certain successor entities. A court would be required to award costs and attorney's fees related to recovering the claim to the association.

The bill would take effect September 1, 2019, and would apply only with respect to a property and casualty insurance company that was designated as an impaired insurer on or after the effective date.

SUPPORTERS SAY:

SB 1063 would streamline the administration and other processes for the Texas Property and Casualty Insurance Guaranty Association (TPCIGA),

a nonprofit organization created by the Legislature to serve as a safety net to protect insurance consumers. The bill would allow the association greater flexibility in conducting meetings and would appropriately expand the association's ability to obtain reimbursements for attorney's fees and certain other costs.

The bill would streamline the process by which TPCIGA could fill vacancies on the association's board of directors by allowing the insurance commissioner to appoint public members, which would help avoid delays in filling board vacancies. SB 1063 would bring TPCIGA's meeting requirements in line with the Texas Windstorm Insurance Association by allowing the board to conduct meetings over conference call.

SB 1063 also would allow the association to obtain reimbursement of attorney's fees and expenses incurred in defending against claims for which current law expressly and unambiguously precludes recovery and would ensure that TPCIGA was clearly authorized to recover workers' compensation from the successor entities of high net worth insured employers.

OPPONENTS SAY:

No concerns identified.